IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

RP.No. 98 of 2007(E)

AGAINST THE JUDGEMENT/ORDER IN WPC.26088/2006 Dated 29/11/2006

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REVIEW PETITIONERS/RESPONDENT:

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1. THE DISRICT PANCHAYAT THRISSUR,
   REPRESETNED BY ITS SECRETARY,
   DISTRICT PAHAYATH OFFICE,
   AYYANTHOLE, THRISSUR.

2. THE SECRETARY, THRISSUR DISTRICT
   PANCHAYATH, DISTRICT PANCHAYATH OFFICE,
   AYYANTHOLE, THRISSUR.

3. THE PRESIDENT,
   THRISSUR DISTRICT PANCHAYATH,
   DISTRICT PANCHAYATH OFFICE,
   AYYANTHOLE, THRISSUR.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS: RESPONDENT/PETITIONER.

K.GOPINATH, AGED 61 YEARS,
S/O.P.MADHAVA MENON,
RESIDING AT 1/3836,
KALYANI, EAST HILL ROAD,
CALICUT.

BY ADV. SRI.V.V.SURENDRAN

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

R.P. No. 98 OF 2007

Dated this the 28th day of February, 2007

O R D E R

My judgment dt.29.11.06 under which I disposed of the Writ Petition directing the respondents, the Trichur District Panchayat, the Secretary, Trichur District Panchayat and the President of Trichur District Panchayat to pay the amounts claimed by the Writ Petitioner under Ext.P3 to him at their earliest and at any rate within a maximum period of five months of receiving copy of the judgment is sought to be reviewed by respondents in the Writ Petition on various grounds.

2. It is submitted that when passing the judgment, certain vital aspects which are material to the matter in dispute were not considered by this Court. It is pointed out at the very outset itself that Trichur District Panchayat being an authority constituted under the Kerala Panchayat Raj Act unlike the Grama Panchayats has to rely solely on plan funds issued to it by the Government from year to year. In the year 2003-04 the review petitioner-District Panchayat decided to propose construction of a Vanitha Super Market by spending a sum of Rs.20 Lakhs. District Planning Committee which is the expert Committee constituted by the Government has to sanction all projects of the District Panchayat before they implemented. The proposal was accordingly

submitted before the planning Committee of which the District Collector is the Secretary. Annexure (1) is copy of the proposal and the sanction granted by the District Planning Committee on 30.11.03 for the construction of a Vanitha Super Market at an estimated cost of Rs.20 Lakhs. After getting Annexure 1 sanction, the District Panchayat made enquiries for the place on which the Vanitha Super market has to be constructed. In the mean while 1.50 acres of land in which a tailoring and garment manufacturing training center is functioning in the heart of Irinjalakuda town was transferred to the District Panchayat. It was thought that the proposed Vanitha Super Market project sanctioned as per Annexure 1 should be implemented upon the above said 1.5 acres of land in Irinjalakuda town. It was decided that a larger project with the name Vanitha Complex could be implemented at the aforesaid 1.5 acres of land for providing employment to at least 100 women. For the above purpose the District Panchayat as per resolution No.6 decided that the project with anticipated expenses of Rs.5 Crores be submitted to the District Planning Committee for approval. It was also decided that the then Secretary of the District Panchayat should be authorized to identify an expert from the Government approved panel of architects with the purpose of preparing a layout, its approval, preparing designs, cost approval etc. Annexure II is copy of the resolution dt.20.01.04 in that

regard of the District Panchayat. It is highlighted in the review petition that the Secretary of the Panchayat was authorized only to identify the architect. The petitioners submits that as can be seen from Ext.P1 the then Secretary without any authority proceeded to appoint the petitioner in the Writ Petition as the architect. The very appointment of the Writ Petitioner by the then Secretary of the Panchayat is against Annexure I resolution of the Panchayat. The Panchayat has not made any resolution to appoint the writ petitioner as the architect for the construction of the Vanitha Complex. In the meanwhile, the District Panchayat submitted a proposal for construction of Vanitha Complex at Iriginjalakuda with an estimate cost of Rs.1 Crore 30 Lakhs and that the project was a multi year project which is to be stared in February 2004. Though the initial proposal was for an amount of Rs.4 Crores, the District Planning Committee considered the proposal and granted sanction for only 1 Crore 30 Lakhs as per its decision on 21.02.04. Annexure II is copy of the proposal submitted by the District Panchayat and the decision of the District Planning Committee. On the basis of Annexure III it is submitted that the total sanction of the project is only 1 Crore 30 Lakhs. It is after coming to know all these aspects that the Secretary proceeded to execute Ext.P2 agreement with the Writ Petitioner. The Secretary without authority of the Panchayat executed

Ext.P2 agreement on 26.02.04 and on 28.02.04 issued a cheque for Rs.3 Lakhs to the petitioner. This too was done without any resolution of the Panchayat. It is pointed out that there is absolutely no mention regarding the project in Ext.P2. Estimate amount can only be what was sanctioned by the Planning Committee. Even before Ext.P2 was executed, the District Planning Committee had approved only a sum of Rs.1 Crore 30 Lakhs. If the total amount is taken as 1 Crore 30 lakhs then the total amount due to the petitioner is only 2.33% of 1 Crore 30 Lakhs and that the claim of the petitioner that he is entitled to Rs.11,18,400/- as remuneration for having submitted drawings with an estimate cost of Rs.4 Crores 80 Lakhs will not be binding on the Panchayat. District Panchayat will be liable to pay charges only on the basis of the cost which is approved by the District Planning Committee. The Panchayat will be able to avail only Rs.1 Crore 30 Lakhs for the purpose of the construction of Vanitha Complex project. The District Panchayat has to prepare a design, drawing and rough cost estimate within the cost limiting to Rs.1 Crore 30 Lakhs sanctioned by the District Planning Committee and thereafter submit the same again to the Technical Committee of the District Planning Committee. Only after getting technical sanction, the Panchayat will be able to start the project. The above vital aspect of the matter was omitted to be brought to the

notice of this Court at the time of hearing. There is audit objection that a sum of Rs.8 lakhs which is far in excess of what was legally due to the petitioner is already paid to the Writ Petitioner and objection thus is even against the payment already made. Annexure 4 true copy of the regional performance audit report relating to the Trichur District Panchayat is also produced.

3. Sri.Ranjith Thampan the newly appointed Standing Counsel for the District Panchayat addressed me very elaborately. My attention was drawn by him to Annexures I,III Exts.P2, P3 and also to the pleadings raised by the parties, particularly, the counter affidavit which had been submitted by the District Panchayat to the Writ Petition. Mr.Ranjith submitted that the subject matter of the dispute includes crucial facts which could not be answered by this Court under Article 226 of the Constitution and this Court ought to have relegated the matter to a Civil Court to resolve the dispute. Allowing the impugned judgment to operate will compel the District Panchayat to pay public money further to the Writ Petitioner who has already been paid far in excess of what was legitimately due to him. This will result in further mis-utilisation of public money which itself, will be sufficient reason for allowing the Review Petition. The District Panchayat does not have funds of its own. The only fund available to the Panchayat is the grant given by the State

Government and as far as this project is concerned, the Panchayat has already released what was admissible under the grant. Counsel submitted that this Court was carried away in the last submission by the then counsel for the Panchayat that amounts will be released as and when funds are available. The above submission was made unauthorisedly and ignoring the serious contentions which had been raised through the counter affidavit. Counsel would rely on the judgment of the Supreme Court in **Sree Swami Krishnand Govindanath V. M/s.M.D. Oswal Hosiery (Regd.)** [AIR 2002 SC 1162] to contend that the above submission of the then counsel is not binding on the District Panchayat.

4. Sri.Harish, learned counsel for the respondent would make a very sincere endavour to refute all the submissions of Sri.Ranjith Thampan. Learned Counsel submitted that there is no warrant whatsoever for invoking jurisdiction for reviewing the judgment which is not vitiated by any error and much less errors apparent on the face of the records.

5. Referring to the irregularities which had been highlighted by Sri.Ranjith Thampan in his submissions in the matter of issuing appointment order to the Writ Peititoner, Mr.Harish would submit that the Writ Petitioner is not at all to blame. As far as the Writ Petitioner is

concerned, he had been issued Ext.P1 appointment order and execution of Ext.P2 agreement had not been disputed by the Secretary in his Counter Affidavit submitted in the Writ Petition. The petitioner is a reputed architect. Though it is true that in Ext.P2 agreement, the estimate is not shown the Writ Petitioner is a reputed architect whose services had been utilised by the District Panchayat. The quality of the work done by the Writ Petitioner has not been questioned. In Ext.P1 appointment order itself it is very clearly stated that Rs.90 lakhs have been earmarked for the year for this project which is to be completed by 31.03.2004 and that the approximate estimate cost will be Rs.5 Crores. The speed which is noticeable in the matter of issuance of Ext.P1 and execution of Ext.P2 was only because of the reason that the sum of Rs.90 lakhs which had been earmarked for that year was to be spent on or before 31.03.04. Mr.Harish would further submit that having availed the services of a reputed professional, the Panchayat cannot now deny his professional charges on technical reasons, even if there has been any irregularity in the matter of issuance of appointment order or in the matter of execution of the agreement. It is the Secretary alone who is to be faulted for the irregularity and loss if any which has been caused to the District Panchayat should be recovered from the Secretary. The District Panchayat is not at all justified in withholding professional

charges due to the Writ Petitioner, the learned counsel concluded.

6. I have considered the rival submissions made at the Bar in the light of the pleadings raised in the Writ Petition, documents placed on record including the Annexures produced along with the review petition. It will be noticed at the very outset that the tone and tenor of the submissions made on behalf of the District Panchayat at the time when the Writ Petition was heard was different from those made at the hearing of the present review petition. Some of the irregularities which were highlighted before me by Sri.Ranjith Thampan in the matter of issuing appointment order to the Writ Petitioner are serious. The resolution of the District Panchayat authorised the Secretary only to identify an architect. Concededly no tenders were invited for the same. Perhaps Mr.Harish is correct when he says that the field of choice amongst highly qualified architects empannelled by Government Departments and Corporations being very small, it will be unnecessary to invite tenders. But then also, quotations from those among the narrow field of choice could have been sought for. It is seen that not even from the Writ Petitioner a quotation was invited. Instead the Secretary straightaway issued the appointment order to the Writ Petitioner on the basis of a resolution which only directed him to identify an architect. Even though Mr.Harish submitted that there was a

discussion and a resolution pursuant to which only Ext.P2 contract was executed there is nothing on record to indicate that there was any discussion and much less resolution involving the President of the District Panchayat and the members of the District Panchayat council. Ext.P2 agreement significantly does not contain the common seal of the Panchayat which is mandatory as per rules 3 and 6 of the Kerala Panchayat Raj Act Contract Rules. What is more striking is the circumstance that Ext.P2 is executed after Annexure III sanction of the District Planning Committee was issued on 13.02.04. Under Annexure III the project has been sanctioned for a sum of Rs.1 Crore 30 Lakhs only. It is difficult to assume that the Secretary of the Panchayat was unaware of Annexure III sanction of the District Planning Committee. Going by the amounts sanctioned under Annexure III the maximum charges which could have been claimed and received by the Writ Petitioner has already been received by him and he has overdrawn a sum of Rs.4,97,100/-. The objections raised in the regional peformance audit report are also serious in nature. The above reasons persuade me very much to recall my judgment. But at the same time the submissions of Mr.Harish that the Writ Petitioner is a professional Architect of excellent reputation, the Secretary of the Panchayat and not he, is to blame and that the quality of the services rendered by writ

petitioner to the District Panchayat is not under challenge also should not go unnoticed. Accordingly, even as I allow the Review Petition and dispose of the Writ Petition afresh relegating the Writ Petitioner to a competent Civil Court for adjudication of the dispute, there will be a further direction to the review petitioners not to recover the amounts already paid to the Writ Petitioner. All further proceedings pursuant to the registered notice DPT/PLG/115/04/05 dt.12.12.07 issued by the District Panchayt, Trichur to the Writ Petitioner will stand stayed absolutely. Review Petition is allowed as above and the judgment dt.29.11.06 in WP(C) No.26088 of 2006 is recalled. No costs.

PIUS C. KURIAKOSE, JUDGE

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